

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT BECKLEY**

JULES GAUTIER,
*individually and on behalf of all
others similarly situated,*

Plaintiff,

v.

CIVIL ACTION NO. 5:20-cv-00165

TAMS MANAGEMENT, INC and
PAY CAR MININC, INC. and
BLUESTONE INDUSTRIES, INC. and
BLUESTONE RESOURCES, INC. and
BLUESTONE COAL CORP.,

Defendants.

ORDER

Pending is Defendants' Motion for Summary Judgment [Doc. 20], filed December 7, 2020, and Plaintiff's Motion for Leave to File a Surreply [Doc. 49], filed February 23, 2021.

Federal Rule of Civil Procedure 56 provides that summary judgment is proper where "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The burden is on the nonmoving party to show that there is a genuine issue of material fact for trial. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). "The nonmoving party must do so by offering 'sufficient proof in the form of admissible evidence' rather than relying solely on the allegations of her pleadings." *Guessous v. Fairview Prop. Invs., LLC*, 828 F.3d 208, 216 (4th Cir. 2016) (quoting *Mitchell v. Data Gen. Corp.*, 12 F.3d 1310, 1316 (4th Cir. 1993)).

The Court must "view the evidence in the light most favorable to the [nonmoving]


party.” *Tolan v. Cotton*, 572 U.S. 650, 657 (2014) (internal quotation marks omitted); *Variety Stores, Inc. v. Wal-Mart Stores, Inc.*, 888 F.3d 651, 659 (4th Cir. 2018). “The court . . . cannot weigh the evidence or make credibility determinations.” *Jacobs v. N.C. Admin. Off. of the Cts.*, 780 F.3d 562, 569 (4th Cir. 2015); *see also Lee v. Town of Seaboard*, 863 F.3d 323, 327 (4th Cir. 2017). In general, if “an issue as to a material fact cannot be resolved without observation of the demeanor of witnesses in order to evaluate their credibility, summary judgment is not appropriate.” Fed. R. Civ. P. 56 advisory committee’s note to 1963 amendment.

Genuine issues of material fact are extant in this litigation. As such, the Court **DENIES** Defendants’ Motion for Summary Judgment [Doc. 20] and **GRANTS** Plaintiff’s Motion for Leave to File a Surreply [Doc. 49].

The Court directs the Clerk to transmit a copy of this Memorandum Opinion and Order to counsel of record and to any unrepresented party.

Enter: September 28, 2021




Frank W. Volk
United States District Judge